

Message Text

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FM AMEMBASSY VIENNA

TO SECSTATE WASHC 1200

LIMITED OFFICIAL USE VIENNA 2432

E.O. 11652: N/A

TAGS: OCON, CGEN

SUBJECT: CONSULAR CONFERENCE IN VIENNA

REF: A) VIENNA 2232; B) STATE 57650

1. IN ADDITION TO TOPICS SET FORTH REFTEL A, WE WOULD ALSO
WELCOME DISCUSSION AND DEPARTMENT'S VIEWS AS TO WHAT CONSTITUTES
ADEQUATE NOTIFICATION "WITHOUT DELAY" IN TERMS OF VIENNA
CONVENTION ON CONSULAR RELATIONS, ARTICLE 36(1)(B), IN ARREST
CASES IF AMERICAN CITIZEN REQUESTS CONSULAR OFFICER BE INFORMED.
THIS QUESTION SOMETIMES CAUSES US CONCERN HERE AND WE KNOW IT
EXISTS ELSEWHERE.

2. NEITHER TREATY OF FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS
BETWEEN AUSTRIA AND THE UNITED STATES OF JUNE 19, 1928 TS
838), NOR VIENNA CONVENTION ON CONSULAR RELATIONS OF APRIL 24,
1963 (TIAS 6820) CONTAIN PROVISIONS FOR AUTOMATIC NOTIFICATION
OF ARREST OF AN AMERICAN CITIZEN BY AUSTRIAN AUTHORITIES.
NEVERTHELESS, LOCAL AUTHORITIES HAVE USUALLY NOTIFIED US OF
ARRESTS OF AMERICAN CITIZENS WITH OR WITHOUT LATTER'S EXPRESS
REQUEST. THIS IS HOWEVER INFORMAL PROCEDURE AND A
PRODUCT OF GOODWILL AND PERSONAL RELATIONSHIPS. IT IS
THEREFORE SUBJECT TO CAPRICE OF POLICE OFFICIAL MOST
IMMEDIATELY CONCERNED. OWING TO INTERNAL REGULATIONS,
LOCAL PRECINCT STATIONS OR RURAL

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POLICE OFFICERS ARE NOT AUTHORIZED TO COMMUNICATE WITH
FOREIGN MISSIONS OR CONSULAR OFFICES DIRECTLY, BUT ARE
REQUIRED TO REPORT ARRESTS OF FOREIGNERS TO SUPERIOR
HEADQUARTERS BY TELEX. THESE HEADQUARTERS THEN REPORT
ARREST TO MINISTRY OF INTERIOR, DIRECTOR GENERAL FOR
PUBLIC SAFETY, AND LATTER FORWARDS MESSAGE TO EMBASSY
CONCERNED, EITHER THROUGH MINISTRY OF FOREIGN AFFAIRS

OR THROUGH A SECURITY POLICE AGENCY. THIS PROCEDURE
NORMALLY CAUSES A DELAY OF THREE TO FIVE DAYS OR EVEN
LONGER IN NOTIFICATION PROCEDURE EVEN WHEN PRISONER
EXPRESSLY REQUESTS POLICE TO NOTIFY HIS
EMBASSY OR CONSUL AT TIME OF ARREST.

3. ALTHOUGH WE HAVE MADE KNOWN REPEATEDLY OUR DESIRE
TO APPROPRIATE AUSTRIAN OFFICIALS AT ALL
TO BE IMMEDIATELY NOTIFIED OF ARRESTS OF AMERICAN CITIZENS
LEVELS, GENERAL RESPONSE HAS BEEN THAT NOTIFICATION
THROUGH NORMAL AUSTRIAN BUREAUCRATIC CHANNELS,
PROTRACTED THOUGH IT MAY BE, IS TO BE CONSIDERED "WITH-
OUT DELAY" WITHIN MEANING OF VIENNA CONSULAR CONVENTION.
WE GRANT THAT THIS MAY MEET REQUIREMENT OF "LAWS AND
REGULATIONS OF RECEIVING STATE" (ARTICLE 36(2), BUT
IS STILL GIVES US HEARTBURN. ARE WE BEING UNDULY
CONCERNED ABOUT QUESTION OF ACCESS? IT SHOULD BE
CLEARLY UNDERSTOOD THAT WHAT IS INVOLVED HERE IS STRICTLY
DIFFERENCE OF OPINION CONCERNING DEFINITION OF "WITHOUT
DELAY" IN GAINING CONSULAR ACCESS AND NOT ANY PROBLEMS
OF MISTREATMENT OF AMERICAN PRISONERS OR DEPRIVATION
OF THEIR RIGHTS UNDER AUSTRIAN LAWS. AUSTRIAN CITIZENS ARE
SIMILARLY SUBJECT TO BEING HELD IN EFFECT INCOMMUNICADO.
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